



EUROPEAN COMMISSION

DG Competition

***Case M.9824 - XPO  
LOGISTICS / KUEHNE  
+ NAGEL DRINKFLOW  
LOGISTICS HOLDINGS***

Only the English text is available and authentic.

**REGULATION (EC) No 139/2004  
MERGER PROCEDURE**

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Article 4 (4)

Date: 17/09/2020



## EUROPEAN COMMISSION

Brussels, 17.9.2020  
C(2020) 6473 final

### **PUBLIC VERSION**

In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EC) No 139/2004 concerning non-disclosure of business secrets and other confidential information. The omissions are shown thus [...]. Where possible the information omitted has been replaced by ranges of figures or a general description.

**To the notifying party**

**To the Competition and Markets Authority**

**Subject: Case M.9824 – XPO LOGISTICS / KUEHNE + NAGEL  
DRINKFLOW LOGISTICS HOLDINGS  
Commission decision following a reasoned submission pursuant to Article 4(4) of Regulation No 139/2004<sup>1</sup> in conjunction with Article 131 of the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community, for referral of the case to the United Kingdom and Article 57 of the Agreement on the European Economic Area<sup>2</sup>.**

**Date of filing: 13.08.2020**

**Legal deadline for response of Member States: 03.09.2020**

**Legal deadline for the Commission decision under Article 4(4): 17.09.2020**

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<sup>1</sup> OJ L 24, 29.1.2004, p. 1 (the 'Merger Regulation'). With effect from 1 December 2009, the Treaty on the Functioning of the European Union ('TFEU') has introduced certain changes, such as the replacement of 'Community' by 'Union' and 'common market' by 'internal market'. The terminology of the TFEU will be used throughout this decision.

<sup>2</sup> OJ L 1, 3.1.1994, p. 3 (the 'EEA Agreement').

Dear Sir or Madam,

## 1. INTRODUCTION

- (1) On **13 August 2020**, the Commission received by means of a Reasoned Submission a referral request pursuant to Article 4(4) of the Merger Regulation (the “**Reasoned Submission**”) with respect to the proposed acquisition by XPO Logistics, Inc. (“**XPO**”) of sole control over a substantial part of Kuehne + Nagel Limited’s (“**Kuehne + Nagel**”) contract logistics business in the UK (“**the Target**”) within the meaning of Article 3(1)(b) of the Merger Regulation (the “**Transaction**”).
- (2) According to Article 4(4) of the Merger Regulation, where a certain concentration has a Union dimension, and before a formal notification has been made to the Commission, the parties to the transaction may request that their transaction be referred in whole or in part from the Commission to the Member State where the concentration may significantly affect competition and which present all the characteristics of a distinct market.
- (3) XPO and Kuehne + Nagel request that the Transaction should be examined in its entirety by the competent authorities of the United Kingdom.
- (4) A copy of this Reasoned Submission was transmitted to all Member States on **13 August 2020**.
- (5) On **03 September 2020**, the Competition and Markets Authority (“**CMA**”) as the competent authority of the United Kingdom informed the Commission that the United Kingdom agrees with the proposed referral.

## 2. THE PARTIES

- (6) **XPO** is a US-based global logistics provider of supply chain solutions. It operates a network of people, technology and physical assets in 30 countries, with 1,506 locations and approximately 97,000 employees. XPO uses its network to help its customers manage their goods more efficiently throughout their supply chains. XPO conducts the majority of its European operations through its subsidiary, XPO Supply Chain UK Limited. In the United Kingdom, XPO provides its services to customers in a range of sectors, including industry, chemicals, drinks and retail. XPO is listed on the New York Stock Exchange.
- (7) **The Target** comprises the UK private limited company Kuehne + Nagel Drinkflow Logistics Holdings Limited, which is currently a wholly owned subsidiary of Kuehne + Nagel, also a UK private limited company. The Target contains a substantial part of the UK contract logistics business of Kuehne + Nagel. It operates via a network of 82 sites, employs over 8,500 people and provides its customers with a similar range of services as XPO, but principally in market segments that cover drinks, food services and certain retail customers.
- (8) XPO and the Target are referred to collectively as the “**Parties**”.

## 3. THE OPERATION AND CONCENTRATION

- (9) The Transaction concerns the acquisition by XPO of sole control over the Target within the meaning of Article 3(1)(b) of the EU Merger Regulation.

- (10) After completion of the Transaction, XPO will own all of the shares of the Target. XPO will therefore exercise sole control over the Target.
- (11) It follows that the Transaction would result in a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

#### **4. EU DIMENSION**

- (12) The undertakings concerned have a combined aggregate worldwide turnover of more than EUR 5 000 million (XPO: EUR [...] million for FY 2019; the Target: EUR [...] million for FY 2019). Each of them has an EU-wide turnover in excess of EUR 250 million (XPO: EUR [...] million; the Target: EUR [...] million) and XPO does not achieve more than two-thirds of its aggregate EU-wide turnover within one and the same Member State.
- (13) The Transaction therefore has an EU dimension within Article 1(2) of the Merger Regulation.

#### **5. ASSESSMENT**

- (14) The Parties both provide contract logistics services. The Target, however, is only active within the United Kingdom. The Transaction therefore concerns the provision of contract logistics services in the United Kingdom.
- (15) Regarding the provision of contract logistics services, the Transaction would give rise to horizontally affected markets on a number of plausible, relevant product markets in the UK. In particular, the Parties would have combined market shares in excess of 40% in the UK on a potential market for the distribution of drinks to pubs and bars.
- (16) The Transaction does not lead to any affected markets that could plausibly be wider than the UK, or to any affected markets outside of the UK.
- (17) The Transaction does not give rise to any vertical relationships between the Parties.

##### **5.1. Relevant product markets**

- (18) The Commission has previously defined contract logistics as “*the part of the supply chain process that plans, implements and controls the efficient, effective flow and storage of goods, services and related information from the point of origin to the point of consumption in order to meet customers’ requirements*”.<sup>3</sup> The customer could be the supplier (e.g. the factory) or the buyer of the goods (e.g. the supermarket), but the service is essentially the same in both scenarios.
- (19) The Commission has identified contract logistics as a distinct product market from other elements of the supply chain such as bare transportation, freight forwarding or warehousing services. In particular, the Commission has noted that contract logistics

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<sup>3</sup> See, for example, Case M.6059, Norbert Dentressangle / Laxey Logistics, paragraph 9. See also case M.6570 UPS / TNT Express, paragraph 31.

ought to be regarded as a separate relevant product market, because the focal point in contract logistics is the management of the flow of goods for customers.<sup>4</sup>

- (20) In previous cases, the Commission has considered different possible segmentations of the overall market for contract logistics services, in particular between cross border and domestic logistics services. The Commission has also examined the possibility of segmenting the market by the type of goods handled or the industry sector concerned, e.g., food retail, drinks, consumer pharmaceuticals and high-tech.<sup>5</sup> Ultimately, the Commission has left the relevant product market definition open.<sup>6</sup>
- (21) As regards a possible distinction between the types of goods handled, the Parties' activities only overlap within contract logistics for food services, drinks and retail in the UK. The Commission has previously assessed a potential UK market for drinks distribution, but the relevant product market definition was left open.<sup>7</sup>
- (22) The CMA has also considered, when it reviewed Carlsberg's outsourcing of its drinks distribution operations to DHL, whether there might be a distinct market consisting of "*the provision of secondary drinks distribution logistics services*" to the retail outlets of on-trade customers.<sup>8</sup> Secondary distribution involves the last mile distribution of drinks to pubs and bars. It contrasts with "primary distribution", which involves the distribution of such drinks from a brewery to a supermarket's regional distribution centre or to a wholesaler's depot (for onward supply into a secondary distribution network).
- (23) The possible distinction between cross border and domestic contract logistics services is not relevant to the assessment of the present Transaction. This is because the customers for contract logistics, in the segments in which the Target operates, are concerned with their domestic contract logistics needs only, and the Parties therefore do not provide cross border logistics services to these customers. The Target is therefore not active in the provision of cross border logistics services.
- (24) The Parties consider that the appropriate relevant product market consists in a single market for the provision of contract logistics services without further segmentation.
- (25) However, the exact product market definition can ultimately be left open for the purpose of this referral decision, as this would not change the outcome of the assessment of the referral request.

## **5.2. Relevant geographic market**

- (26) In the Commission's prior decisions, the contract logistics market has traditionally been looked at as national in scope<sup>9</sup>, although in more recent cases the Commission

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<sup>4</sup> See Case M.1895, Ocean Group / Exel, paragraph 7.

<sup>5</sup> See, for example, Case M.6059, Norbert Dentressangle / Laxey Logistics, paragraph 10. See also Case M.4232, Scottish&Newcastle / Kuehne+Nagel/JV, paragraph 14.

<sup>6</sup> See, for example Case M.6059, Norbert Dentressangle / Laxey Logistics, paragraph 14. See also Case M.4232, Scottish&Newcastle / Kuehne+Nagel/JV, paragraph 16.

<sup>7</sup> See case M.4232, Scottish&Newcastle / Kuehne+Nagel/JV, paragraphs 16-21.

<sup>8</sup> Anticipated acquisition by DHL Supply Chain Limited of the enterprise constituted by the secondary assets of Carlsberg Supply Company UK Limited (2017), paragraphs 4 and 36.

<sup>9</sup> See, for example, Case M.4232, Scottish&Newcastle / Kuehne+Nagel/JV, paragraph 15.

has also identified a trend towards internationalisation, with the possibility that the market may be becoming EEA-wide.<sup>10</sup>

- (27) In the CMA’s review of Carlsberg’s outsourcing of its drinks distribution operations to DHL, the CMA found that the supply of secondary drinks logistics services requires making multiple small deliveries, which may require a local network. The CMA therefore considered that “*the frame of reference is unlikely to be wider than national*”.<sup>11</sup>
- (28) For the purpose of assessing the referral request, the question of whether the overall market for contract logistics services is becoming EEA-wide in scope can be left open, as the Transaction will not lead to any affected markets that could plausibly be wider than the UK or to any affected markets outside of the UK. All of the markets that could potentially be affected by the Transaction as thus no wider than the UK.

### 5.2.1. Legal requirements

- (29) According to the Commission Notice on case referral, in order for a referral to be made by the Commission to one or more Member States pursuant to Article 4(4), the following two legal requirements must be fulfilled:
- a) there must be indications that the concentration may significantly affect competition in a market or markets,<sup>12</sup> and
  - b) the market(s) in question must be within a Member State and present all the characteristics of a distinct market.<sup>13</sup>
- (30) Pursuant to point 17 of the Commission Notice on case referral, for there to be indications that the concentration may significantly affect competition in a market or markets, the Parties are in essence required to demonstrate that the Transaction is liable to have a potential impact on competition on a distinct market in a Member State, which may prove to be significant, thus deserving close scrutiny. While the Parties are not required to demonstrate that the effect on competition is likely to be an adverse one, they should point to indicators that are generally suggestive of the existence of some competitive effects stemming from the Transaction. In this context, the existence of ‘affected markets’ within the meaning of the Form RS is generally considered sufficient to meet the requirements of Article 4(4) of the Merger Regulation.<sup>14</sup>
- (31) Concerning the first legal requirement set out in paragraph (29) above, based on the information submitted in the Reasoned Submission, the Transaction would give rise to several affected markets in the UK, which present all the characteristics of distinct markets.
- (32) The Parties submit that their combined market shares on the overall market for contract logistics services is below 20% both in the UK and on an EEA wide market. However, on the basis of the information submitted in the Reasoned Submission, the

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<sup>10</sup> See, for example, Case M.3971, Deutsche Post / EXEL, paragraph 28.

<sup>11</sup> Anticipated acquisition by DHL Supply Chain Limited of the enterprise constituted by the secondary assets of Carlsberg Supply Company UK Limited (2017), paragraphs 45.

<sup>12</sup> Further developed in point 17 of the Commission Notice on Case Referrals.

<sup>13</sup> Further developed in point 18 of the Commission Notice on Case Referrals.

<sup>14</sup> Footnote 21 of the Commission Notice on case referral.

Transaction would give rise to horizontally affected markets (with combined market shares in excess of 20%) on the following plausible product markets in the UK:

- i) Drinks distribution contract logistics services (primary and secondary distribution combined), with a combined market share of [30-40]% (XPO: [0-5]%; Target: [20-30]%),
  - ii) Primary drinks distribution contract logistics services, with a combined market share of [20-30]% (XPO: [0-5]%; Target: [20-30]%),
  - iii) Secondary drinks distribution contract logistics services, with a combined market share of [40-50]% (XPO: [0-5]%; Target: [30-40]%),
  - iv) Retail distribution contract logistics services, with a combined market share of [20-30]% (XPO: [10-20]%; Target: [0-5]%).
- (33) The potentially affected markets mentioned above are all considered to be UK-wide in scope. The Transaction will not lead to any affected markets that could plausibly be wider than the UK. As the Target is only active in the UK, the Transaction will also not lead to any affected markets outside of the UK.
- (34) The information provided by the Parties also indicates that there are few suppliers active within distribution of drinks in the UK. Even though the market share increments brought about by the concentration are limited, the Transaction could potentially lead to a strengthening of an oligopolistic market structure on a plausible market for drinks distribution logistics services in the UK.
- (35) Since it is plausible that the market for contract logistics services can be segmented based on the type of goods handled, in particular with regard to the distribution of drinks, and since the Transaction would give rise to “affected” markets on this basis, the Commission considers that the Transaction “*may significantly affect competition*” on these markets in the UK within the meaning of Article 4(4) EUMR.
- (36) On this basis, the Commission considers that the first requirement set forth by Article 4(4) of the Merger Regulation is met.
- (37) Concerning the second legal requirement set out in paragraph 29 above, pursuant to point 18 on the Commission Notice on case referral, the Parties are required to show that a geographic market in which competition is affected by the Transaction is national, or narrower than national in scope.
- (38) Furthermore, pursuant to point 20 on the Commission Notice on case referral, concentrations the effects of which are likely to be confined to, or have their main economic impact in a single Member State, are the most appropriate candidate cases for referral to that Member State.
- (39) As explained in paragraph (33) above, all the affected markets set out in paragraph (32) above that the Transaction plausibly gives rise to are no wider than national in scope. The Transaction will thus not lead to any affected markets that could be wider than the UK or to any affected markets outside of the UK.
- (40) Furthermore, the effects of the Transaction will be entirely confined to the UK. First, the customers for contract logistics, in the segments in which the Target operates, are

concerned with their domestic contract logistics needs only. The Parties therefore do not provide cross border logistics services to these customers, and the Target does not provide any cross border logistics services whatsoever. Second, the Target's business, assets and customers are entirely located in the UK.

- (41) On that basis, even on the widest plausible geographic market definition, the Transaction would not affect any market outside the UK.
- (42) On this basis, the Commission considers that the second requirement set forth by Article 4(4) of the Merger Regulation is met.

#### 5.2.2. *Additional factors*

- (43) In addition to the verification of the legal requirements, point 19 of the Notice provides that it should also be considered whether referral of the case is appropriate, and in particular "*whether the competition authority or authorities to which they are contemplating requesting the referral of the case is the most appropriate authority for dealing with the case*".
- (44) In addition, point 23 of the Notice states that "*consideration should also, to the extent possible, be given to whether the NCA(s) to which referral of the case is contemplated may possess specific expertise concerning local markets, or be examining, or about to examine, another transaction in the sector concerned*".
- (45) The Commission considers that the CMA would be best placed to examine the effects of the Transaction, since the CMA has recent and specific expertise in examining the potentially affected markets and other markets in the UK drinks sector, for instance in relation to pub mergers.<sup>15</sup> The CMA thus has expertise with the relevant markets from previous market investigations.
- (46) Furthermore, the Commission has recently adopted several decisions granting full referral to the CMA in related sectors, such as in cases M.8322 – *Heineken UK / Punch Taverns Securitisation* and M.9492 – *Stonegate Pub Company/Ei Group*.
- (47) Finally, the requested referral would preserve the principle of "one-stop-shop" to the extent that the case would be referred to a single competition authority, which is an important factor of administrative efficiency.

#### 5.2.3. *Conclusion on referral*

- (48) In light of the information provided by the Parties in the Reasoned Submission, and on the basis of the above considerations, the Commission concludes that the present case meets the legal requirements set out in Article 4(4) of the Merger Regulation in that the Transaction may significantly affect competition in a market within a Member State which presents all the characteristics of a distinct market.
- (49) Furthermore, the requested referral would be consistent with paragraphs 19-23 of the Commission Notice on case referrals, in particular because the CMA appears to be the most appropriate authority to examine the Transaction.

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<sup>15</sup> See, for example, *Stonegate Pub Company / Ei Group plc merger inquiry* (2020); *Heineken / Punch Taverns merger inquiry* (2017); and *Greene King / Spirit Pub Company merger inquiry* (2015).



**6. CONCLUSION**

- (50) For the above reasons, and given that the United Kingdom has expressed its agreement, the Commission has decided to refer the transaction in its entirety to be examined by the United Kingdom. This decision is adopted in application of Article 4(4) of the Merger Regulation, Article 57 of the EEA Agreement and Article 131 of the UK Withdrawal Agreement.

*For the Commission*

*(Signed)*  
*Olivier GUERSENT*  
*Director-General*